Supreme Court, U.S.
FILED
JAN 17 1983
ALEXANDER L. STEVAS
CLERK

No. 82-979

In the Supreme Court of the United States

OCTOBER TERM, 1982

FEDERAL LABOR RELATIONS AUTHORITY, PETITIONER

v.

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT

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Petitioner contends that Title VII of the Civil Service Reform Act of 1978, 5 U.S.C. (Supp. V) 7131(a), requires that a federal agency pay a per diem allowance and travel expenses to employee union representatives engaged in collective bargaining with the agency.

On four occasions in 1980, five employees of respondent, the Department of Agriculture, traveled to Fargo, North Dakota, from other locations to participate as union negotiators in collective bargaining with the agency. Respondent granted the employees time off from their usual duties, but denied a request that it pay the employees' travel expenses and per diem (Pet. App. 8a). Respondent American Federation of Government Employees, the union that the employees represented, filed an unfair labor practice charge with petitioner, the Federal Labor Relations Authority. Petitioner determined (*id.* at 28a-33a) that the Department

of Agriculture had committed an unfair labor practice and ordered it to pay the disputed expenses. Petitioner based its order on its belief that the Civil Service Reform Act of 1978, 5 U.S.C. (Supp. V) 7131(a), requires a federal agency to pay travel expenses and per diem allowances to employee union representatives engaged in collective bargaining with the agency.

On petition for review of that decision, the court of appeals concluded (Pet. App. 1a-24a) that deference to petitioner's interpretation of the statute was inappropriate and that petitioner had interpreted Section 7131(a) incorrectly. Therefore, the court refused to enforce petitioner's order. The court of appeals noted (Pet. App. 18a n.19) that its decision was consistent with the decision of the Second Circuit in *Division of Military and Naval Affairs, State of New York* v. *FLRA*, 683 F.2d 45 (1982), petition for cert. pending, No. 82-1021 (filed Dec. 16, 1982), and in direct conflict with the decision of the Ninth Circuit in *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, 672 F.2d 732 (1982), petition for cert. pending, No. 82-799 (filed Nov. 10, 1982).

In *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, petition for cert. pending, No. 82-799 (filed Nov. 10, 1982), the Solicitor General, on behalf of the Bureau of Alcohol, Tobacco and Firearms, has sought review of the Ninth Circuit decision to which the court below referred. In that case the FLRA ordered the BATF to pay travel expenses and a per diem allowance to an employee union representative who had engaged in collective bargaining with BATF. The Ninth Circuit enforced that order, holding that the FLRA's interpretation of the Civil Service Reform Act of 1978, 5 U.S.C. (Supp. V) 7131(a), is correct. Thus, the petition in the *Bureau of Alcohol, Tobacco and Firearms* case presents the same issue that is raised in this case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be held and disposed of in light of the disposition of *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, No. 82-799.

REX E. LEE
Solicitor General

JANUARY 1983

DOJ-1983-01